

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RICARDO LEODORO URBINA,

Defendant-Appellee.

UNPUBLISHED

April 24, 2012

No. 303650

Kent Circuit Court

LC No. 10-011818-FH

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the suppression of transcript evidence and the dismissal of defendant's perjury charge. Because a witness may not have his act of perjury excused, through suppression of evidence, because of constitutional violations, we reverse and remand for further proceedings.

This case stems from the preliminary examination testimony in district court of defendant, Ricardo Leodoro Urbina, in a separate case. Defendant was charged with domestic violence concerning his daughter and interfering with electronic communications. At the district court proceeding, defendant expressed a desire to represent himself. From our review of the record, it is clear the district court allowed defendant to represent himself without properly following MCR 6.005(D), which requires a defendant be warned of the dangers of self-representation and the maximum prison sentence. During his self-representation, defendant called himself as a witness, testifying at one point that he never laid his hands on his daughter.

At a later, unrelated hearing in a different court, defendant admitted that he assaulted his daughter. Plaintiff thereafter charged defendant with perjury in the present case. Based on the district court's failure to comply with MCR 6.005(D), however, the trial court in the present case found that defendant's Sixth Amendment right to counsel had been violated at the district court hearing and suppressed the transcript containing the evidence of defendant's possible perjury. Because this was the only evidence of defendant's perjury, the trial court also dismissed the perjury charge. This appeal followed.

A trial court's "ultimate determination on a motion to suppress" is reviewed de novo, while a trial court's factual findings are reviewed for clear error. *People v Mullen*, 282 Mich App 14, 21; 762 NW2d 170 (2008); see also *People v Bassage*, 274 Mich App 321, 324; 733 NW2d 398 (2007) (holding that a trial court's determination regarding whether to suppress

evidence of perjury from a separate case where there was a constitutional violation is reviewed de novo). “A finding is clearly erroneous if it leaves us with a definite and firm conviction that the trial court made a mistake.” *People v Manning*, 243 Mich App 615, 620; 624 NW2d 746 (2000). “[T]he application of a constitutional standard to uncontested facts” is also reviewed de novo. *Mullen*, 282 Mich App at 21; see also *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

The central question in the present case is whether the trial court’s suppression of a preliminary examination transcript from another case, containing what may be defendant’s perjured testimony, is the proper remedy where defendant was allowed to represent himself at the preliminary examination without being properly advised of the dangers in accordance with MCR 6.005(D), in violation of his Sixth Amendment right to counsel. We find that suppression is not the proper remedy.

In *People v Jeske*, 128 Mich App 596, 601; 341 NW2d 778 (1983), overruled on other grounds, *People v Lively*, 470 Mich 248, 252; 680 NW2d 878 (2004), we recognized that even in light of an alleged violation of the defendant’s “right to due process, the right to counsel, and the right against self-incrimination,” a perjury conviction based on testimony obtained, potentially, in violation of these rights, would be upheld. We noted that, “we would uphold defendant’s perjury conviction even if the perjured testimony was obtained in violation of defendant’s constitutional rights. The United States Supreme Court has made clear that deprivation of a defendant’s constitutional rights does not create a license to commit perjury.” *Jeske*, 128 Mich App at 602, citing *United States v Wong*, 431 US 174; 97 S Ct 1823; 52 L Ed 2d 231 (1977); *United States v Mandujano*, 425 US 564; 96 S Ct 1768; 48 L Ed 2d 212 (1976). While *Jeske* involved alleged Fifth Amendment violations, we find the principle to be equally applicable to the Sixth Amendment violations. Just as the Fifth Amendment “does not condone perjury,” *Wong*, 431 US at 178, neither does the Sixth Amendment.

We reaffirmed this view of perjury following alleged constitutional violations in *Bassage*, 274 Mich App at 326-327, wherein we addressed the question of whether perjured testimony should be suppressed if obtained unlawfully. We determined that, even in light of a potential Fifth Amendment violation of the “right against self-incrimination,” the false testimony should not be suppressed and defendant’s testimony was not sheltered by an aegis of an alleged constitutional violation. *Id.* at 326. A defendant cannot use a constitutional violation as an excuse to lie under oath. See *id.* at 327. As we noted in *Bassage*, this flows from the fundamental principle in our justice system that, “justice is founded upon truthful testimony, and no one – neither witness nor party – can take the oath and then lie from the witness stand with the justification that the government violated his or her rights in securing that testimony.” *Id.* Suppression of the testimony obtained in violation of constitutional rights is *not* the proper remedy because “a witness may not have his act of perjury excused, through suppression of evidence, because of constitutional violations.” *Id.* at 328 (quotation omitted).

Consequently, the trial court erred in suppressing the transcript evidence that formed the basis for the perjury charge and erred in dismissing the perjury charge. We reverse the trial court’s orders suppressing the transcript and dismissing the perjury charge and remand for further proceedings consistent with this opinion.

Reversed and remanded for reinstatement of the perjury charge and to allow the prosecution to use the transcript allegedly containing defendant's perjured testimony. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Deborah A. Servitto

/s/ Cynthia Diane Stephens